

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUDY DELGADO,

Petitioner,

v.

Hon. Victoria A. Roberts
Civil Case No. 05-70946
Criminal Case No: 00-81120-1

UNITED STATES OF AMERICA,

Respondent.

ORDER DISMISSING MOTION FOR HABEAS CORPUS

This matter is before the Court on Petitioner's motion for relief pursuant to 28 USC §2255. The Court **DISMISSES** the motion as untimely.

Motions under §2255 must be filed within a one year period of limitation. Here, the one year period began to run from the date on which the judgment of conviction became final¹. 28 USC §2255. "[F]or criminal defendants who do not file a petition for certiorari with [the United States Supreme Court] on direct review, §2255's one-year limitation period starts to run when the time for seeking such review expires." *Clay v. United States*, 537 U.S. 522, 532 (2003).

The judgment from the Sixth Circuit, affirming Petitioner's conviction, was filed on December 5, 2003. *U.S. v. Delgado*, 350 F.3d 520 (6th Cir. 2003). The Petitioner did

¹There are three other dates from which the one year period can begin to run, none of which are presented here.

not file a petition for certiorari with the Supreme Court. Consequently, the one year period began to run 90 days after entry of the Sixth Circuit judgment. Sup.Ct.R. 13. To be considered timely under §2255, the Petitioner had to file his motion by March 4, 2005². The Petitioner filed his motion on March 11, 2005. According to the unambiguous language of §2255, Petitioner's motion is untimely. Therefore, it is **DISMISSED.**

IT IS SO ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: December 15, 2005

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on December 15, 2005.

s/Linda Vertriest
Deputy Clerk

²90 days from December 5, 2003 is March 4, 2004, one year from that is March 4, 2005.